

No. 15-0063 RV

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

Based upon the complaint, which we take as true for purposes of ruling on the motion for decision on the pleadings, we find the following facts.

Findings of Fact

1. In August 2014, Carmichael purchased a new car (“the Mitsubishi”). He decided not to trade in his 2008 Saturn Vue (“the Vue”) because the price offered by the dealer was too low.

2. Carmichael listed the Vue for sale, but it did not sell before he was required to obtain license plates and tabs for the Mitsubishi. He kept current tabs on the Vue, and also titled and licensed the Mitsubishi.

3. Carmichael sold the Vue in November 2014. He took the plates off the car and sent them to the Department of Revenue, and requested a refund for the unexpired license plates and tabs.

4. On December 18, 2014, the Director issued her final decision to Carmichael denying his refund request.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director’s final decisions. Section 621.050.1, RSMo 2000.² Carmichael has the burden to prove that he is entitled to a refund. Section 621.050.2. Our duty is not merely to review the Director's decision, but to independently apply existing law to the facts and render the ultimate administrative decision. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute. *Community Fed. Sav. & Loan Ass’n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. banc 1990). “When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure

² Statutory references are to RSMo Cum. Supp. 2013, unless otherwise noted.

to be followed and such other terms and conditions as it sees fit.” *State ex rel. Brady Motorfrate, Inc. v. State Tax Comm’n*, 517 S.W.2d 133, 137 (Mo. 1974).

Missouri statutes provide for refunds or credits against unused license plates and tabs from motor vehicles only in limited circumstances. Section 301.121, for example, provides for a refund of certain amounts paid when a license plate is surrendered, but only for commercial vehicles registered in excess of 54,000 pounds. By contrast, § 301.140.7, which applies to other motor vehicles, provides:

Upon the transfer of ownership of any currently registered motor vehicle wherein the owner cannot transfer the license plates due to a change of vehicle category, **the owner may surrender the license plates issued to the motor vehicle and receive credit for any unused portion of the original registration fee against the registration fee of another motor vehicle.** Such credit shall be granted based upon the date the license plates are surrendered. **No refunds shall be made on the unused portion of any license plates surrendered for such credit.**

(Emphasis added).

Section 301.140.7 allows a credit for the unused portion of the original registration fee against the registration fee of another motor vehicle upon transfer of ownership of a vehicle when the owner cannot transfer the license plates due to a change of vehicle category. Based upon the facts before us, Carmichael is not eligible for a credit under this subsection at this time, and this subsection expressly does not allow a refund for the unused portion of plates and tabs. Nor does § 301.140.3, which allows a reduced transfer fee when license plates are transferred from a motor vehicle that will no longer be operated to a newly purchased motor vehicle by the owner of such vehicles, apply to Carmichael.

In his response to the motion, Carmichael states that his wife told the representative at the local driver’s and vehicle license bureau about his dilemma – that he wanted to keep current license plates and tabs on both the Mitsubishi, so that he could drive it, and the Vue, so that

prospective purchasers could legally test drive it. He also states that the representative told his wife that they could apply for a refund of the unused portion of the plates on the Vue after it was sold. He complains that they were misled, and that the Director's subsequent final decision did not adequately inform them of the basis of the refund denial – otherwise, he would not have wasted his time by filing this appeal. Because he believes the Department of Revenue failed to properly communicate the law to him, he feels it should be held responsible for its errors and be required to issue the refund.

Although Carmichael's frustration is understandable, neither the Director nor this Commission may change the law. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985). When we consider the general principles of law governing refunds and examine the pertinent statutes, we find no law authorizing a refund to Carmichael under these circumstances. We conclude that none exists. Therefore, we must deny Carmichael's request for a refund.

Summary

Carmichael is not entitled to a refund of the fees he paid for the license plates and tabs.

SO ORDERED on February 25, 2015.

/s/ Karen A. Winn

KAREN A. WINN
Commissioner